

Agreement No. ROA 09-004

LOAN AGREEMENT BETWEEN
THE COUNTY OF KINGS AND THE
KINGS COUNTY REDEVELOPMENT AGENCY

This LOAN AGREEMENT ("Agreement") is made as of Dec 22, 2009 by and between the County of Kings (the "County"), a political subdivision of the State of California and the Kings County Redevelopment Agency (the "Agency"), a community redevelopment agency duly formed and existing under the California Health and Safety Code (see the "Community Redevelopment Law", Health and Safety Code section 33000 et seq.). Each of the County and the Agency is a Party to this Agreement and together are the Parties to this Agreement.

RECITALS

This Agreement is entered into with reference to the following facts:

A. The Agency is a redevelopment agency organized and existing under the laws of the State of California. As such it is empowered to expend funds for the elimination of blight within, or of benefit to, the Kettleman City Redevelopment Project (the "Project"; the area of the Project is hereafter referred to as the "Project Area"), to encourage the increase and preservation of employment opportunities for residents of Kings County generally and of the unincorporated area of Kettleman City and of the area served by the Kettleman City Community Services District (hereinafter referred to as the "District") specifically (altogether, the "Community"), and to expand economic activity within the Community and Project Area.

B. The purpose of this Agreement is to allow the County to assist in effectuating the redevelopment plan for the Project (the "Redevelopment Plan") adopted by Ordinance No. 635 of the County of Kings (the "County") on July 19, 2005 by loaning money to the Agency, which money would be used by the Agency to help the District in facilitating the development, improvement, expansion, and modernization of a water treatment plant, commercial storage tanks and other water distribution facilities (the "Water Treatment Plan"; see Attachment 1) on parcels of real property within the Project Area located at Kettleman City, California (the "Site"). Successful completion of the Water Treatment Plan on the Site as contemplated by this Agreement is vital to the continued development of the Project as there is currently no excess capacity for potable water which would allow additional development in the Project Area and in the Community.

C. The Water Treatment Plan will improve the economic and physical conditions in the Project Area by allowing for the development of real property with residential, commercial, industrial, and public uses made possible through the availability of potable water over the term of the Redevelopment Plan and in accordance with its purposes and goals. Completion of the Water Treatment Plan will allow for the creation of several hundred jobs which will be of benefit to the Project Area and the Community as a whole.

D. The District is an existing community services district organized and existing under the laws of the State of California. District desires to modernize its existing water treatment plant by developing the Water Treatment Plan in two phases which phases are more fully identified in the Scope of Development developed for the Project as described in Attachment 1 hereto.

E. The District has secured, or will secure, additional partial financing for the Water Treatment Plan from its own resources and other governmental agencies in amounts sufficient to complete the project. The Kings County Board of Supervisors has previously committed three million dollars (\$3,000,000) (the "County Funds") for completion of the project. The District currently has no means of securing the amount needed to complete Phase I of the Water Treatment Plan other than through the provision of the County Funds from the Agency. It is in the best interests of the citizens of the Community and of the Project Area for the County to assist the Agency and the District in its endeavor to modernize and expand the water treatment plant by loaning the Agency three million dollars (\$3,000,000) (the "County Loan") which would in turn be provided by the Agency to the District for the above-described purposes. The assistance provided by the County through the County Loan on the terms described in this Agreement is made for the common benefit of the Parties hereto and the residents and taxpayers of the Project Area and the Community. The repayment of the County Loan would be made from the tax increment accruing to the Agency after completion of the project, and the District would in no way be responsible for the repayment of the County Loan to the Agency.

F. The County and the Agency have an ongoing interest in maintaining the viability of the County Loan by assuring themselves, to the extent possible, that District: i) maintains the water treatment plant and its water distribution facilities in the highest order; ii) continues to provide appropriate service to its rate payers; and iii) maintains its own fiscal solvency during the term of the County Loan.

NOW, THEREFORE, in consideration of the mutual covenants, representations, and warranties set forth in this Agreement, the parties agree as follows:

ARTICLE 1

TERMS AND CONDITIONS OF COUNTY LOAN

County shall loan to Agency the amount of three million dollars (\$3,000,000) which amount shall be used by Agency exclusively for the purposes of assisting the District in the completion of Phase I of the Water Treatment Plan. The County Loan as provided for herein shall be repaid by the Agency to the County on an annual basis on or before the first day of _____ of each year in the form of the "Annual Payment". The amount of the Annual Payment in each year shall be fifty percent (50%) of the total net tax increment accruing to the Agency from property taxes assessed and collected within the Project Area during the prior year. The first such annual payment shall be made on or before June 30, 2010. The tax increment is defined as that amount described as that incremental amount of taxes described in subdivision (b) of California Health and Safety Code section 33670. For the purposes of this Article, the "total net tax increment" is defined as that amount of the tax increment remaining in each year after subtraction of the 20% Low and Moderate Housing Set-Aside and the 25% Pass Through to other local taxing entities. There shall be an interest portion and a principal portion of the Annual Payment, which portions shall be calculated by the County Finance Department at the time of receipt of each Annual Payment. The interest portion on the principal balance outstanding as of the day before the first day _____ of each year shall be paid first at the average of the Pooled Rate on funds being held in the County Treasury during the prior year. After payment of the interest portion of the Annual Payment at the average Pooled Rate for each year, the remaining amount, if any, of the Annual Payment over and above the interest portion of the Annual Payment shall be credited against the principal. After calculation of such amounts, the County Finance Department shall notify the County, the Agency and the District of such determinations.

The Agency may disperse the County Loan proceeds to the District in the form of either loans or grants, in the Agency's discretion. Whether such dispersements be either loans or grants, Agency's repayment obligation to County hereunder shall not be effected.

ARTICLE 2

ANNUAL TRANSFER OF FUNDS FROM AGENCY TO COUNTY BY THE COUNTY FINANCE DEPARTMENT

On _____, 2010, and on the first day of _____ of each year thereafter until the loan principal amount is paid in full, the Annual Payment from the Agency funds to the County shall be made by the County Finance Department by a fund transfer of the Annual Payment amount. If the first day of such month is on a

Saturday, Sunday or holiday, the fund transfer shall be made on the next County business day. Within ten days of the date of such fund transfer in each year, the Finance Department shall provide a written statement providing notice to the Agency that the transfer has been completed, and the notice shall include a statement of the calculated amounts for interest and principal.

ARTICLE 3

GENERAL TERMS

The terms and provisions of this Agreement shall be binding on and inure to the benefit of the successors and assigns of the Parties.

This Agreement constitutes the entire agreement between the Parties with respect to the County Loan and supersedes all prior agreements, oral and written, between the Parties to this Agreement with respect to the subject matter of this Agreement.

This Agreement may not be amended, modified, or supplemented except by written agreement in writing signed by the Party against which the enforcement of the amendment, modification, or supplement is sought. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision. No waiver shall be binding unless executed in writing by the Party making the waiver.

If any legal action or other proceeding is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs incurred in the action or proceeding, in addition to any other relief to which the prevailing party may be entitled.

This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one counterpart has been signed by each party and delivered to the other party hereto.

This Agreement shall be governed by and construed under the laws of the State of California.

In the event any provision of this Agreement is deemed to be invalid, illegal, or unenforceable, all other provisions of the Agreement that are not affected by the invalidity, illegality, or unenforceability shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

Agency:

By: Joe Neves
Joe Neves

Chairman, Kings County Redevelopment Agency
Board of Directors
DEC 22 2009

County:

By: Joe Neves
Joe Neves

Chairman, County of Kings
Board of Supervisors
DEC 22 2009

ATTACHMENT NO. 1

SCOPE OF DEVELOPMENT

[Scope of Development to include specific materials, textures, schematic plans, etc.]

The Water Treatment Plan shall be developed in two phases as follows:

Phase 1: Proposed Water Treatment Plant. The Surface Water Treatment Plant would treat water from the California Aqueduct. A new turnout would be constructed where the raw water supply would be metered, boosted with variable speed pumps, cleaned with an automatic self cleaning strainer and treated with a membrane filtration and choramine disinfection treatment process. The proposed capacity of the treatment facility is 900 gallons per minute (gpm) or 1.3 million gallons per day (MGD). The membrane filtration plant will consist of a package micro filtration or ultra filtration water treatment facility. No chemicals are required for the water treatment process except for the disinfectant, which will be injected into the water as it leaves the plant. The treated water would then be retained for a short time in a storage tank to allow adequate contact time. The treated water will then be boosted to KCCSD water storage tanks or the distribution system depending on demand. The membrane package plant, chemical feed equipment, office and work area will be enclosed in a metal building. There will be storage tanks for the ammonia, liquid chlorine and membrane cleaning solution. There will also be sludge ponds for discharge of the waste particles that have been removed from the raw water.

Phase 2: Proposed Commercial Tank Facility. The Commercial Tank Facility shall include two (2) each 250,000 gallon welded steel water storage tanks, vertical centrifugal booster pumps, PVC pipelines, electrical control building, emergency diesel generator, compacted embankment, aggregate base, reinforced concrete, oiled sand, fabricated steel manifolding, drainage system and miscellaneous appurtenances. Available site locations will be reviewed. The water storage tanks shall be placed at equal elevations to the other facilities.